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February 20, 2007

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Re: D-1-GN-07-000129; *Citizens Organizing for Resources and Environment, et al. vs. Rick Perry, Governor of Texas, et al; in the 200<sup>th</sup> Judicial District, Travis County, Texas.*

Dear Counsel:

I have carefully considered the Governor's and SOAH's pleas to the jurisdiction. The Texas Constitution, SOAH statute, and the Uniform Declaratory Judgment Act provide the basis for jurisdiction. Sovereign immunity is no bar. The plaintiffs have standing, and exhaustion of administrative remedies is not required. The challenge to the validity of the Executive Order is ripe because it has been issued and acted upon by the Chief Administrative Law Judge and SOAH's hearing officers.

Having considered the stipulated facts, the plaintiffs' motion for temporary injunction presents a pure question of law: whether the Governor may constitutionally direct a hearing officer to hold a hearing and reach a decision by a particular deadline. I have concluded that the plaintiffs are likely to prevail on their argument that the Governor lacks that authority.

Cause No. D-1-GN-07-000129

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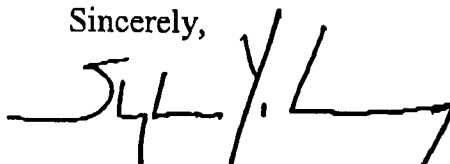
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The plaintiffs have established that they will be irreparably harmed if SOAH's adherence to the Executive Order is not temporarily enjoined because they will be forever deprived of a meaningful opportunity to be heard on their motion for continuance before being put to a several-day trial that may be of no consequence and may have to be retried at a later date.

I will therefore, enter a temporary injunction, precluding the Chief Administrative Law Judge, SOAH, and the two hearing officers assigned to the consolidated hearings from giving effect to the Executive Order and requiring them to reconsider the scheduling order and the motion for continuance without reference to the Executive Order.

Mr. Blackburn and Mr. Kahn, please prepare an order consistent with this letter, present it to Ms. Dahlberg for approval as to form, and submit it to me for signature at your earliest convenience.

Sincerely,



STEPHEN YELENOSKY  
Judge, 345th District Court  
Travis County, Texas

SY:nh

Orig: Honorable Amalia Rodriguez-Mendoza, District Clerk